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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,976	03/03/2004	Diana Lynne Gann	9566	4843

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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,976

Applicant(s)

GANN ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/04, 1/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Drawings

1. The drawings are objected to because in Figure 1, tampon 14 and the line therefrom should be shown in dashed lines to denote underlying structure. Also, numeral 20 does not clearly denote the outer perimeter as described. Figure 1b does not appear accurate, i.e. the ridge at the opposite end adjacent 20 in Figure 1a is not shown. Figure 2 is not a cross section along 2-2 as described on page 3. The bracket denoted 26 in Figure 2 does not denote only the end of the tampon 14 as described. Figure 5 should clearly denote 15 therein. In Figure 7c, the structure denoted 30 does not clearly appear to be a projection as described. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

2. The abstract of the disclosure is objected to because on lines 5 and 6, “a”(1st) should be --the-- . Also on line 6, after “aligned with”, --the longitudinal axis of-- should be inserted. On the last line, “in the...position” should be deleted. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: On page 3, line 6, “a tampon” should be --the tampon-- . The description of Figure 2 on page 3 is inconsistent with the Figure 2 and page 7, lines 15-16, i.e. is the Figure 2 a cross-section along line 2-2 or something else with a cut away? On page 5, seventh line from the bottom, “expel,”” should be --expel”-- . On page 6, second line from the bottom, “shown” (both) should be --denoted-- . On page 9, line 14, “hinged 39” should be --hinge 39-- . On page 10, line 20 and page 11, line 1, “aide” and “aides” should be --aid-- and --aids-- , respectively. In claim 1, Applicant claims a cap permanently associated with the tube. “Associated” as defined by the dictionary, i.e. Applicant did not specifically define this term, means “to bring into company with one another, join in a relationship”. Therefore, a cap “permanently associated” with the tube interpreted in light of this definition, and page 5, line 20 and page 11, lines 7-10 is deemed to require permanent joining or attaching, directly or indirectly, of the cap with the tube. Claim 1 further requires the tampon, i.e. some portion thereof, to contact, i.e. touch, the cap during expulsion to reorient the tampon with regard to the tube. Yet in claim 3 Applicant claims the cap remains in

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association with the end of the tampon and in claim 4 Applicant claims the cap remains joined to the end. Since the terminology of claim 1 requires touching but not necessarily “joining” and “association”, i.e. “associated” and “joined” appear to both require some type of connection, i.e. at a minimum indirect connection, and requires at least a portion thereof but not necessarily the end but the claims use the terminology “remains in association” with the end or “remains joined” with the end, it is unclear what Applicant is claiming in claim 1 and thus further claiming in claims 3-4. It is further noted that if at least some portion of the tampon is joined or associated, the entire tampon is also, i.e. at least indirectly, i.e. if the end remains associated or joined so does the entire tampon. This lack of clarity is exacerbated by the description of the invention in the Summary of the Invention section which also discusses contact and joining but not association, e.g. compare page 2, lines 26-28 to claim 3 and the description of the invention in the fourth full paragraph on page 7, the first full paragraph on page 8, and section I. on pages 9-11 which also do not clearly delineate the invention as claimed in the various claims. A clear, complete description of the relationship between the tampon and the cap should be set forth. Note the discussion in the Claim Language Interpretation section *infra*.

Appropriate correction is required.

Claim Objections

4. Claims 1-11 are objected to because of the following informalities: in claim 1, line 8, “the” should be --a--. In claims 3-4, line 2, after “tube”, --,-- should be inserted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The permanent connection or joined relationship, i.e. “association”, between the cap and the tampon tube holder critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). See page 11, first full paragraph, i.e. “the hinge 39”, i.e. the cap, “must remain connected to the tampon tube holder during...14”, and note that claim 12 does not recite any permanent connection between the cap and tube.

6. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claims 1-11, as discussed supra in paragraph 3 supra, the relationship between the tampon and the cap during expulsion is unclear, e.g. claim 1 claims “said tampon contacts said...cap” yet claim 3 claims “said...cap.. remains in association with ...end of said tampon” and claim 4 claims “said...cap remains joined to...end of said tampon”. In regard to claim 8, lines 2-3 are unclear, i.e. after “and”, should --the tampon tube holder further comprises-- be inserted?

Claim Language Interpretation

7. The claim language is interpreted in light of the definitions set forth on page 4, lines 9-10, 15-16, 24-25, page 5, lines 3-5, 8-9, and 13 et seq, and page 6, lines 1-10. Additionally since the terminology “substantially aligned” and “substantially non-aligned” has not been specifically

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defined and “aligned” is defined by the dictionary as “to arrange in a line”, the claim language “said tampon... substantially aligned with said longitudinal axis of said...tube in a pre-expelled position” and “during expulsion...reorienting...non-aligned...tube” is interpreted to require the tampon from its insertion end to its withdrawal end being arranged substantially parallel to the longitudinal axis of the tube in the pre-expelled position but sometime during expulsion from the tube the tampon from its insertion end to its withdrawal end being substantially reoriented to not be in line with such axis. Also due to the lack of clarity discussed supra, claim 1 is interpreted to require some portion of the tampon contacts the cap to reorient the tampon as interpreted supra, claim 3 is interpreted to require at least a portion of the insertion end of the tampon is in association with the cap during expulsion and claim 4 is interpreted as requiring that at least a portion of the insertion end contacts the cap during expulsion.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Bleuer ‘808.

See Claim Language Interpretation section supra, and ‘808 at the Figures and col. 2, lines 8-27, i.e. the product is 20, 26 and 32, the tube is 20, the cap is 32 and the region of rupture is 40-46.

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Allowable Subject Matter

10. The prior art references, alone or in any combination, do not teach a feminine hygiene product as set forth in claims 1-11, as best understood, see discussion supra.


Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art shows a tampon applicator.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
January 10, 2006